

STATE OF INDIANA ) IN THE LAGRANGE COUNTY Sup. COURT  
) SS:  
COUNTY OF LAGRANGE ) CAUSE NO. 44 DSI-0702-PL-1

STATE OF INDIANA, )  
)  
Plaintiff, )  
)  
v. )  
)  
RUDY RODRIGUEZ, JR )  
individually and doing business as, )  
FAT AUTO SALES, )  
)  
Defendant. )

**FILED**

**FEB 12 2007**

BEVERLY S. ELLIOTT, CLERK  
LAGRANGE SUPERIOR COURT

**COMPLAINT FOR INJUNCTION**  
**COSTS AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmuller, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, for injunctive relief, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c).
2. The Defendant, Rudy Rodriguez, Jr., is an individual doing business as Fat Auto Sales, who at all times relevant to this complaint, regularly engaged in the retail sale of used motor vehicles, with a principal place of business in LaGrange County located at 35 West 700 N., Brighton, IN 46746.

## FACTS

3. On February 2, 2005, the Indiana Attorney General's Consumer Protection Division issued a title non-delivery warning letter to the Defendant, informing him of his duty to comply with Indiana's motor vehicle title delivery statute when engaging in vehicle sales. The warning letter is attached hereto and incorporated by reference as State's Exhibit "A".

4. On or about March 24, 2005 Leon Lehman (hereinafter "Lehman") purchased a 2001 Ford F150, vehicle identification number (hereinafter "Ford"), from the Defendant for a total purchase price of \$11,130.00

5. Defendant failed to deliver the Ford's title to Lehman, at the time of sale or delivery.

6. Defendant failed to provide Lehman with a "21-day affidavit" as permitted by Ind. Code §9-17-3-3.1.

7. Mr. Lehman paid for the Ford in full on March 24, 2005.

8. On March 24, 2005, the Defendant's agent, Bud Woodard, provided Lehman with a "Bill of Sale/ Non Refundable Down-Payment" document, stating "the remaining balance of "zero" is due in full before title can be released to buyer..." A copy of the bill of sale is attached hereto and incorporated by reference as State's Exhibit "B".

9. On June 9, 2005, the Defendant or his agent provided Lehman with a second bill of sale, on which the Defendant or his agent indicated the Ford was "paid in full". A copy of the June 9, 2005 bill of sale is attached hereto and incorporated by reference as State's Exhibit "C".

10. The Defendant delivered the Ford title to Lehman on or around February 10, 2006.

**COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

11. The transaction identified in paragraph 4 is a "consumer transaction" as defined by Ind. Code §24-5-0.5-2(1).

12. The Defendant, Rudy Rodriguez, Jr., is a "supplier" as defined in Ind. Code §24-5-0.5-2(3).

13. The representation made by Defendant and/or his employee to Lehman, violate the Indiana Deceptive Consumer Sales Act as follows:

(a) the Defendant and/or his agent misrepresented warranty of title in violation of Ind. Code §24-5-0.5-3(a)(8);

(b) the Defendant and/or his agent misrepresented that the Defendant would deliver the Lehman's title within a stated or reasonable period of time from the date of purchase in violation of Ind. Code §24-5-0.5-3(a)(10).

14. On the date of sale, the Defendant knew or should have known that he could not deliver the Lehman's title as represented.

**COUNT II  
VIOLATIONS OF TITLE DELIVERY STATUTE**

15. Plaintiff realleges paragraphs 1 through 14.

16. The Defendant's failure to timely deliver title to Lehman, violates Ind. Code §9-17-3-3.

**COUNT III**  
**INCURABLE DECEPTIVE ACTS**

17. Plaintiff realleges paragraphs 1 through 16.

18. The Defendant intentionally sold Lehman the Ford, knowing he could not deliver title as represented.

19. The Defendant's representations as referenced above constitute incurable deceptive acts and are actionable by the Attorney General pursuant to Ind. Code §24-5-0.5-1 *et seq.*

**IRREPARABLE INJURY**

20. The misrepresentations set forth above will continue and will cause irreparable injury unless the Defendant Rudy Rodriguez, Jr. is enjoined from engaging in further conduct in violation of Ind. Code §24-5-0.5-1 *et seq.*

**RELIEF**

**WHEREFORE**, Plaintiff, State of Indiana, requests that this Court enter judgment against the Defendant Rudy Rodriguez, Jr. as follows:

a. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1), enjoining the Defendant, his agents, representatives, employees, successors, and assigns, from:

(1) selling motor vehicles without delivering vehicle titles as required by Ind. Code §9-17-3-3;

(2) misrepresenting warranty of title in violation of Ind. Code §24-5-0.5-3(a)(8); and,

(3) misrepresenting his ability to deliver vehicle titles within a stated or reasonable period of time in violation of Ind. Code §24-5-0.5-3(a)(10).

b. Costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

c. On Count I of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation specific to the Lehman transaction payable to the State of Indiana;

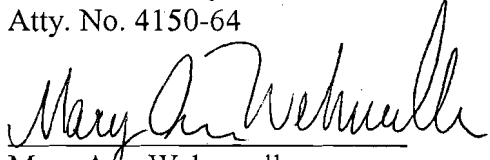
d. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation, payable to the State of Indiana; and

e. All other proper relief.

Respectfully submitted,

STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By:

  
Mary Ann Wehmüller  
Deputy Attorney General  
Atty. No. 15251-49A

Office of Attorney General  
Consumer Protection Division  
Indiana Government Center South  
302 W. Washington, 5<sup>th</sup> Floor  
Indianapolis, IN 46204  
Maw:365246

**STATE OF INDIANA  
ATTORNEY GENERAL  
STEVE CARTER**

February 2, 2005

Fat Auto Sales  
35 W 700 N  
Brighton, IN 46746

**RE: File No. 04-CP-60508  
Lonnie Carpenter complaint  
WARNING LETTER**

Dear Sir or Madam:

I have reviewed the above-referenced file regarding Lonnie Carpenter's complaint against Fat Auto Sales. On September 2, 2004, you sold a 2000 Dodge Neon/ES, to Cory Carpenter. To date, you have failed to deliver a valid merchantable title to Mr. Carpenter.

It appears that Fat Auto Sales violated Indiana's title delivery statute, Indiana Code §9-17-3-3. As you know, the statute requires a dealer to deliver the certificate of title to the purchaser at the time of the sale or delivery, provided the purchaser has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens. If a dealer cannot deliver title to a purchaser on the date of sale or delivery, certificate of title can be conveyed within 21 days after the date of sale if all of the following conditions exist:

- (A) The seller is a licensed vehicle dealer by the state.
- (B) The dealer is not able to deliver the certificate of title at the time of sale or transfer.
- (C) The dealer reasonably believes that it will be able to deliver the certificate of title, without a lien or an encumbrance on the title, within the twenty-one (21) day period.
- (D) The dealer provides the purchaser with a 21-day affidavit, as prescribed by Ind. Code §9-17-3-3.1 of this chapter.



**DIVISION OF CONSUMER PROTECTION**  
INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR  
302 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770  
TELEPHONE (317) 232-6330 • (800) 382-5516



Fat Auto Sales  
February 2, 2005  
Page Two

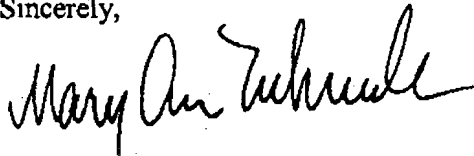
(E) The purchaser has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

Obviously, you failed to deliver title to Cory Carpenter within twenty-one days. Failure to deliver a vehicle title as required by Ind. Code §9-17-3-3 violates the Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 *et seq.*

Pursuant to Ind. Code §25-5-0.5-4(c), the Attorney General may bring an action to enjoin a deceptive act and can seek a judgment for consumer restitution, investigative costs and civil penalties of up to \$1,000.00 per violation. Additionally, the Attorney General may seek a civil penalty of not less than \$50.00 and no more than \$1,000.00 for each day of violation AND for each act of violation, as determined by the court. In lieu of litigation, the Attorney General may seek an Assurance of Voluntary Compliance, in which the dealer agrees to comply with all relevant statutes and regulations in all future consumer transactions, in addition to paying restitution and investigative costs.

If the Attorney General's Office receives any additional complaints against you involving these issues, the matter will be referred to our litigation staff for appropriate enforcement action.

Sincerely,



Mary Ann Wehmüller  
Deputy Attorney General  
Maw:206395



**BILL OF SALE / NON REFUNDABLE  
DOWN-PAYMENT**

**RECEIVED FROM:** Leon O Lehman **(BUYER)**  
\$            **BAL OF DOWN-PAYMENT \$**            **AND/OR**  
**TRADE-IN VIN #**                                 

[illegible]

**AS A NON-REFUNDABLE DOWNPAYMENT FOR AN**

**"AS IS" NON-WARRANTY/CONDITION.**

X 106 VEHICLE  
VIN # YEAR 2001

**MAKE** Ford **MODEL** F-150

THE REMAINING BALANCE \$ zero IS DUE  
IN FULL BEFORE TITLE CAN BE RELEASED TO BUYER  
ON OR BEFORE THIS DATE   /  /  . IF THE DEBT  
IS NOT SATISFIED THEN ALL MONEY AND OR TRADE-  
INS CONCERNING THIS SALE WILL BE FORFEITED  
WITHOUT RECOURSE AND ALL CONTRACTUAL  
OBLIGATIONS CONCERNING THIS SALE WILL BE  
FORFITED, FURTHERMORE I AGREE THAT I  
VOLUNTARILY GIVE UP ANY AND ALL INTEREST IN  
THE VEHICLE(S) DESCRIBED ABOVE. I HAVE READ  
AND DO ACCEPT THIS AS A LEGAL AND BINDING  
CONTRACT.

BUYER x Leah Lehman DATE 3-24-05

**SELLER x** [Signature] **DATE** 3-24-65  
**FAT AUTO SALES**

12/11/1964

Blumberg No. 5138

STATE'S  
EXHIBIT  
B

**USED VEHICLE ORDER**Date June 9 2005 20Dealer FAT Auto SalesPurchaser Leon O Lehman

Phone \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

ENTER MY ORDER FOR ONE ☐ Car ☐ Truck or \_\_\_\_\_ as follows:

YEAR <u>01</u>	MAKE <u>FORD</u>	MODEL <u>F150</u>	BODY <u>P.U</u>	LIC. H.P.
ODOMETER <u>115'000</u>	SERIAL NO.	MOTOR NO.	COLOR <u>Black</u>	STOCK NO.

CAR SALES PRICE	\$ <u>10'500</u>	TOTAL PURCHASE PRICE	\$
DELIVERY AND HANDLING		DEPOSIT	
TAX	<u>630</u>	USED CAR ALLOWANCE \$	
FILING		LESS LIEN \$	
LIC. PLATES		HELD BY	
OPTIONAL EQUIPMENT		EQUITY	
		CASH ON DELIVERY	
		TOTAL PAYMENT	\$ <u>11'130</u>
REMARKS			
<u>Picked up on June 9 2005</u>			
<u>Final payment Received</u>			
<u>PD in full</u>			
TOTAL PURCHASE PRICE	\$		

YEAR	MAKE	MODEL	BODY	COLOR	LIC. H.P.
ODOMETER	SERIAL NO.	TITLE NO.	STOCK NO.		
	MOTOR NO.				

**SOLD AS IS**

I hereby make this purchase knowingly without any guarantee, expressed or implied, by this dealer or his agent.

Customer's Signature

Leon Lehman**SOLD WITH WARRANTY**

We the dealer warranty this vehicle for \_\_\_\_\_ after delivery on a \_\_\_\_\_ retail basis of parts and labor used. (Owner pays \_\_\_\_\_ and dealer pays \_\_\_\_\_ of total retail cost of parts and labor used). All repairs must be made in our service shop or shops authorized by dealer herein named. We do not warranty tires, battery, glass, clock, heater or radio.

Dealer's Signature \_\_\_\_\_

**The information you see on the window form for this vehicle is part of this contract.**  
**Information on the window form overrides any contrary provision in the contract of sale.**

I have read the face of this order, and agree to this purchase contract. I hereby certify that I am 18 years of age or older and acknowledge receipt of a copy of this order. The figures in this order are predicated upon actual correct amount of the lien due on the trade-in motor vehicle.

I agree to accept delivery 6-9-2005 20 S.S. No. \_\_\_\_\_Buyer's Signature Leon Lehman Phone \_\_\_\_\_

Address \_\_\_\_\_

**THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER**

Salesman \_\_\_\_\_

Accepted by \_\_\_\_\_

DEALER'S SIGNATURE \_\_\_\_\_